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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,134	08/20/2003	Anton Gaile	298-209	5331
28249	7590	03/14/2007	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. SUITE 702 UNIONDALE, NY 11553			KRAMER, DEVON C	
			ART UNIT	PAPER NUMBER
			3683	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/14/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/644,134	GAILE, ANTON	
	<b>Examiner</b>	<b>Art Unit</b>	
	Devon C. Kramer	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7, 11-14, 16-18, 25 and 27-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 12 and 13 is/are allowed.
- 6) Claim(s) 1-7 11 14 16-18 25 27 28 is/are rejected.
- 7) Claim(s) 29 and 30 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Objections***

1) Claims 29-30 are objected to because of the following informalities:

Claim 29 line 1, "according to claim 29" should be –according to claim 28--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3) Claims 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Please note that the claims recite a number of different pistons and it is unclear in the claims which piston applicant is referring to because in many instances applicant just recites, "a piston". Applicant should amend the claims to further define each piston.

Claim 12 line 13 recites, "the adjustment unit includes a piston". It is not clear to the examiner if this is a separate from the previously recited pistons.

Claim 12 recites the limitation "the strut piston" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the strut cylinder" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the height regulator valve" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the height sensor" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the strut piston" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the strut cylinder" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5) Claims 1-7, 11, 14, 16-18, 25 and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Niikura et al (4858898).

In re claims 1-5, 14, 16, 18, 25 and 27, Niikura et al provides a spring element with a hydro pneumatic strut capable of being positioned between a bogie and a body of a rail car, the strut comprising: a sliding piston (bottom of 23) in a cylinder (26), a cylinder piston space connected to a hydraulic accumulator (48, 104), the strut having a hydraulic height regulator valve (102) with a feedback loop so the position of the piston can be adjusted. Please note that item 41 can be an auxiliary spring that is concentrically arranged with the strut, and encloses the strut cylinder. The auxiliary

spring of Niikura encloses the strut the same as the instant invention because both utilize a bellows in addition to the spring to enclose the strut.

In re claim 6-7 and 17, see 41, 42 and 49.

In re claim 11, see 101.

In re claim 28, please note that the valve can be considered to be located in a head portion of the cylinder of Niikura.

***Allowable Subject Matter***

- 6) Claims 12-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
- 7) Claims 29-30 would be allowable if written in independent form and amended to correct the claim objections above.

***Response to Arguments***

- 8) Applicant's arguments filed 10/31/05 have been fully considered but they are not persuasive. Applicant argues that Niikura lacks the teaching of an auxiliary spring concentrically arranged within the strut thereby enclosing the strut. Please note that the instant application utilizes a cylinder 40, auxiliary spring 20 and a bellows member to enclose the strut. In the examiner's opinion, the auxiliary spring of Niikura encloses the strut in the same manner as the instant application.

***Conclusion***

- 9) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C. Kramer whose telephone number is 571-272-7118. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on (571 )272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Devon C Kramer  
Primary Examiner  
Art Unit 3683

DK

*Devon C. Kramer*  
3/12/07